UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,389	01/05/2001	Sanjeev Banerjia	10990960-1	5215

22879	7590	01/26/2005	

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EXAMINER
FOWLKES, ANDRE R

ART UNIT	PAPER NUMBER
2122	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO 90C (Rev 10/03)

--Th MAILING DATE of this communication appears on the c ver sheet with the correspondence address --

THE REPLY FILED 05 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may <u>only</u> be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

<p align="center">PERIOD FOR REPLY [check either a) or b)]</p>

a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

    (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ they raise the issue of new matter (see Note below);

    (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
        NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *applicant's remarks are not persuasive (see item 10)*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

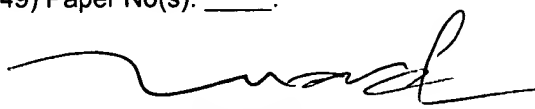   The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: *1-23*.

    Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☒ Other: *See Continuation Sheet*

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SUPERVISORY PATENT EXAMINER

Continuation of 10. Other: Applicants arguments have been considered but they are not persuasive.

In the remarks, the applicant has argued substantially that:
1)   Chilimbi does not disclose a code cache in which instructions are moved from a cold partition to a hot partition of the code cache. Chilimbi's use of a compiler (for partitioning data accessed by the code) teaches away from the claimed invention (improving the performance of a dynamic instruction translator by partitioning instructions into hot and cold partitions of an code cache), at p. 8:1-16.

Examiner's response:
1)   The examiner disagrees with applicants characterization of the applied art. Chilimbi does disclose a code cache in which instructions are moved from a cold partition to a hot partition of the code cache, "Computer applications utilize data structures which are sometimes implemented as classes which are instantiated as objects... (and) Classes define containers of data or information and code (i.e. instructions)", at col. 2:14-17. Additionally, Chilimbi discloses that "the most heavily referenced portions (i.e. instructions) of an object are kept (i.e. moved to) a hot (partition).... While the remaining portions (i.e. instructions) of the object are placed in a ... cold (partition)", at col. 2:35-43. Additionally, Chilimbi discloses that "a further aspect of the invention involves the application of the partitioning to Java programs", at col. 2:54-56.

In response to applicant's argument that a dynamic instruction translator operates very differently than a compiler, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See In re Casey, 152 USPQ 235 (CCPA 1967) and In re Otto, 136 USPQ 458, 459 (CCPA 1963). In this case, both the Chilimbi invention and the instant application are directed to partitioning instructions into hot and cold partitions of an code cache.

In the remarks, the applicant has argued substantially that:
2)   Chilimbi is explicitly directed to splitting only data elements and not code elements, at p. 8:22-23.

Examiner's response:
2)   The examiner disagrees with the applicant's characterization of the applied art. Chilimbi does disclose that "Computer applications utilize data structures which are sometimes implemented as classes which are instantiated as objects... (and) Classes define containers of data or information and code (elements)", at col. 2:14-17. Additionally, Chilimbi discloses that "the most heavily referenced portions (i.e. instructions) of an object are kept (i.e. split and stored) in a hot (partition).... While the remaining portions (i.e. instructions) of the object are placed in a ... cold (partition)", at col. 2:35-43. Additionally, Chilimbi discloses that "a further aspect of the invention involves the application of the partitioning to Java programs", at col. 2:54-56.

In the remarks, the applicant has argued substantially that:
3)   The data cache features disclosed by Chilimbi do not teach code cache features, at p. 9:3-5

Examiner's response:
3)   The examiner disagrees with the applicant's characterization of the applied art. Chilimbi does disclose that "Computer applications utilize data structures which are sometimes implemented as classes which are instantiated as objects... (and) Classes define containers of data or information and code", at col. 2:14-17. Additionally, Chilimbi discloses that "the most heavily referenced portions (i.e. code) of an object are kept (i.e. placed) in a hot (partition).... While the remaining portions (i.e. code) of the object are placed in a ... cold (partition)", at col. 2:35-43.

In the remarks, the applicant has argued substantially that:
4)   Chilimbi does not disclose moving instructions from a cold partition to a hot partition of a code cache.

Examiner's response:
4)   The examiner disagrees with the applicant's characterization of the applied art. Chilimbi does disclose that "Computer applications utilize data structures which are sometimes implemented as classes which are instantiated as objects... (and) Classes define containers of data or information and code (i.e. instructions)", at col. 2:14-17. Additionally, Chilimbi discloses that "the most heavily referenced portions (i.e. instructions) of an object are kept (i.e. placed) in a hot (partition).... While the remaining portions (i.e. instructions) of the object are placed in a ... cold (partition)", at col. 2:35-43.

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